

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings include amendments to Figs. 4a-4c. The amendments are discussed further below.

Attachments: Two (2) Replacement Sheets including Figs. 4a-4c.

REMARKS

In the Office Action¹, the Examiner took the following actions:

required affirmation of a provisional oral election of claims 32-43 and 78-80 with traverse;

objected to the specification for allegedly failing to provide proper antecedent basis for the claimed subject matter under 37 CFR 1.75(d)(1) and objected to the abstract and disclosure of Applicants' specification;

objected to the drawings under 37 CFR §§ 1.83(a), 1.84(p)(4), and 1.84(p)(5);

objected to claims 32-43;

rejected claims 34-39 under 35 U.S.C. § 112, first paragraph;

rejected claims 32-43 and 78-80 under 35 U.S.C. 112, second paragraph;

rejected claims 32-41, 43, and 78-80 under 35 U.S.C. 102(b) as allegedly being anticipated by Buzza et al. (U.S. Patent No. 4,888,998, "Bizza");

rejected claim 42 under 35 U.S.C. 103(a) as allegedly being unpatentable over Bizza; and

provisionally rejected claims 32-43 and 77-80 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 65 and 66 of copending Application No. 10/841,569 (corresponding to U.S. Patent Pub. No. 2005/0250173).

Claims 1-31, 44-77, and 81-87 stand withdrawn; claims 36-38 are canceled; claims 32-35, 39-43, and 78 are amended; and new claims 88-96 are added. Claims 32-35, 39-43, 78-80, and 88-96 remain under examination.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Applicants' Amendments

Applicants have amended the specification, drawings, and claims. The amendments are discussed further below. No new matter is added.

New claim 88 incorporates subject matter recited in claim 35. New claim 89 recites "a movable pipettor having a probe and a probe sealing surface, wherein the probe sealing surface is adapted to surround the access port on an exterior surface of the fluid handling system and sealingly engage a reagent manifold sealing surface when the probe is lowered into the aspiration chamber." Claims 90-96 depend from independent claim 89. Support for claims 89-96 can be found, for example, in the paragraph beginning at page 7, line 13, of the specification.

Restriction Requirement

Claims 32-43 and 78-80 were elected in a provisional oral election, in a telephone conversation between the Examiner and Rebecca McNeill on June 4, 2007. At this time, Applicants elect to begin prosecution of claims 32-43 and 78-80 without traverse.

Objections to the Specification and Abstract

The Examiner objects to the specification for allegedly failing to provide proper antecedent basis for the claimed subject matter under 37 CFR 1.75(d)(1) and objects to the abstract and disclosure of Applicants' specification. Applicants respectfully traverse the objections listed above.

At page 7 of the Office Action, the Examiner objects to the last line of the abstract, which recites a "bypass means; cleanout means; and/or gas and sediment removal means." In particular, the Examiner contends that "[t]he form and legal phraseology often used in patent claims, such as "means" and "said" should be avoided" in abstracts. Id. Applicants respectfully traverse the objection as improper. M.P.E.P. § 608.01(b)(C) merely instructs that such

phraseology should be avoided. There is no requirement, however, that an abstract not contain “legal phraseology . . . such as ‘means’ and ‘said’.” Id. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this objection to the abstract.

With respect to the remainder of the above-listed objections, Applicants also disagree with the Examiner. Nevertheless, in order to advance prosecution, Applicants propose amending the specification as indicated above and discussed below.

At page 6 of the Office Action, the Examiner objects to the specification as allegedly failing to provide support for original claim 42. Applicants amend the paragraph beginning at page 7, line 13, of Applicants’ specification to recite “[i]n an embodiment of the present invention, the aspiration chamber diameter is 25% larger than the probe diameter,” as provided for under M.P.E.P. § 2163.06(III). The Examiner objected to the form of “Brief Description of the Drawings,” at page 7 of the Office Action. Applicants amend the paragraph beginning at page 12, line 17, to recite “**Figs. 3a-1, 3a-2, ..., through 3a-10** illustrate several suitable geometries of alignment features useful for calibrating the position of a fluidic probe.”

In light of the above, Applicants believe the above-listed objections are addressed and respectfully request that the Examiner withdraw the objections. Finally, in response to the Examiner’s request that Applicants correct any minor errors of which Applicants become aware, Applicants propose amendments to the paragraph beginning at page 15, line 3, to correct a minor typographical error.

Objections to the Drawings

The Examiner objects to the drawings under 37 CFR §§ 1.83(a), 1.84(p)(4), and 1.84(p)(5). Applicants respectfully traverse the objections to the drawings. Nevertheless, in

order to advance prosecution, Applicants amend the drawings as shown in the attached Replacement Sheets. In particular, Applicants amend the drawings as follows:

Fig. 4a is amended to illustrate the claimed “face seal,” as recited in claims 34 and 79.

The paragraph beginning at page 45, line 17, of Applicants’ specification is amended to refer to face seal 460.

Fig. 4b is amended to illustrate the claimed “groove,” as recited in claim 39.

The paragraph beginning at page 45, line 17, of Applicants’ specification is amended to refer to groove 417.

Fig. 4c is amended to remove reference to elements 432, 433, 437, and 438.

Support for the amendments to Figs. 4a and 4b, as well as Applicants’ amendments to the specification, can be found in, for example, Applicants’ claims as originally filed as provided for under M.P.E.P. § 2163.06(III).

In addition, Applicants amend the specification to clarify the discussion of elements 400, 425, and 471 and elements 150 and 450 in a manner consistent with the Examiner’s comments at pages 7-8 of the Office Action. Please see Applicants’ exemplary amendments to the paragraph beginning at page 45, line 7 (regarding elements 400, 425, and 471); and the amendments to the paragraphs beginning at page 16, line 1 at page 47, line 19, discussing Fig. 4c (regarding elements 150 and 450). Applicants also amend the specification through out, where appropriate, with respect to elements 400, 425, 471, 150, and 450.

Applicants also amend the specification in a manner consistent with the Examiner’s comments at page 8 regarding the claimed “gas input line” recited in claims 32, 78, and 88. Specifically, Applicants delete occurrences of “air” and amend the specification to disclose “gas

input" lines. An exemplary amendment is illustrated above in the amendments to the paragraph beginning at page 45, line 7, in Applicants' specification.

Applicants respectfully request that the Examiner enter the amendments to the drawings and specification discussed above and withdraw the objection to the drawings.

Objections to the Claims

The Examiner objects to claims 32-43 because the preamble of these claims recites a "fluid handling device." Office Action at 9. Applicants respectfully traverse the objection, but nevertheless amend claims 33-43 in a manner consistent with the Examiner's comments. In addition, new claims 88-96 recite claim language consistent with the Examiner's comments. Accordingly, Applicants believe the objection is addressed and respectfully request that the Examiner reconsider and withdraw the objection to claims 32-43.

Rejection of Claims Under 35 U.S.C. § 112, First Paragraph

Applicants respectfully traverse the rejection of claims 32-43 under 35 U.S.C. § 112, first paragraph discussed at page 9 of the Office Action. The Examiner contends that claims 32-37 recite "an additional third seal configured to enclose the access port to form a face seal when the probe is lowered in to the aspiration chamber" and that the third seal is not supported by Applicants' specification. *Id.*

Applicants respectfully disagree with the Examiner's contentions. Nevertheless, Applicants amend claim 32 to more clearly define the claimed "reagent manifold sealing surface," in a manner consistent with the Examiner's comments at pages 9-10 of the Office Action. Claims 33-35 and 39-43 depend from claim 32 and meet the requirements under 35 U.S.C. § 112, first paragraph, at least due to their dependence. Claims 36-38 are canceled,

rendering their rejection moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 32-43 under 35 U.S.C. § 112, first paragraph.

Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

Applicants respectfully traverse the rejection of claims 32-43 and 78-80 under 35 U.S.C. 112, second paragraph. The Examiner requests clarification of elements recited in claims 32-43 and 68-80 at pages 10-12 of the Office Action. Solely to advance prosecution, Applicants amend claims 32 and 78 in a manner consistent with the Examiner's comments at pages 10-11 of the Office Action. Specifically, claim 32 is amended to recite "an aspiration chamber having an access port, the aspiration chamber being provided within the reagent manifold, the access port being surrounded by a reagent manifold sealing surface at an exterior surface of the fluid handling system" (emphasis added). Claim 78 is amended in a similar manner.

Applicants also amend claims 35, 43, and 78 in a manner consistent with the Examiner's comments at pages 10-12 of the Office Action. Specifically, Applicants amend these claims as follows:

- a) Claim 35 is amended to recite a "system according to claim 34 wherein the reagent manifold sealing surface comprises an elastomeric material." Applicants also add new claim 88 that incorporates subject matter previously recited in claim 35. Specifically, claim 88 recites "[t]he system according to claim 35, wherein the elastomeric material forms an o-ring or a gasket" (emphasis added).
- b) Claim 43 is amended to recite:

The system according to claim 32 wherein the aspiration chamber has a height which is measured from the reagent manifold sealing surface and the probe has a length which is measured from the probe sealing surface to a probe tip, the aspiration chamber height being substantially the same as the probe length (emphasis added).

- c) Claim 78 is amended to recite:

... providing at least one of an aspirating gas from said gas input line and a reagent from one of said plurality of reagent input lines,

wherein said gas input line runs perpendicular to a top surface of the fluid handling system and is provided to the access port within said fluid handling system, and

said one of said plurality of reagent input lines runs perpendicular to the top surface of the fluid handling system and is provided to the access port within said fluid handling system.

In addition, Applicants have amended the specification, as discussed above, in a manner consistent with the Examiner's comments at page 11 regarding claim 42. Applicants also amend the specification and drawings in a manner consistent with the Examiner's comments regarding claim 79 at page 12 of the Office Action. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 32-43 and 78-80 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 32-41, 43, and 78-80 Under 35 U.S.C. 102(b)

Applicants respectfully traverse the rejection of claims 32-41, 43, and 78-80 under 35 U.S.C. 102(b) as allegedly being anticipated by Buzza. The Examiner points to Fig. 2 of Buzza that includes a sample injection cell 28 provided with a probe 22 surrounded by seal 62 that is inserted through annular space 58 and O-ring seal 66 and contends the teachings of the reference anticipate the claimed subject matter. Office Action at 12.

In order to support a rejection under 35 U.S.C. § 102, each and every element of each claim in issue must be found, either expressly or inherently described, in that single reference. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *See M.P.E.P. § 2131*, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Claim 32 recites “an aspiration chamber having an access port, the aspiration chamber being provided within the reagent manifold, the access port being surrounded by a reagent

manifold sealing surface at an exterior surface of the fluid handling system.” Buzza fails to teach the above-discussed element recited in claim 32 or similar elements recited in claim 78.

According to Buzza, O-ring seal 60 and seal 62 are formed in the interior of sample injection cell 28. Buzza, however, does not teach an “access port [] surrounded by a reagent manifold sealing surface at an exterior surface of the fluid handling station,” as recited in claim 32 (emphasis added). Buzza, thus, fails to teach each and every element recited in claim 32. Buzza cannot anticipate claims 32 and 78 (or claims 33-41, 43, 79, and 80 that depend therefrom). Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 32-41, 43, and 78-80 based on Buzza.

Rejection of Claim 42 Under 35 U.S.C. 103(a)

Applicants respectfully traverse the rejection of claim 42 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Buzza because no *prima facie* case of obviousness has been established. The Examiner acknowledges that Buzza does not explicitly state that the “aspiration chamber diameter is 25% larger than the probe diameter,” as recited in claim 42. Office Action at 14. Instead, the Examiner contends that “[a] change in size [of a claimed element] is generally recognized as being within the level of ordinary skill in the art.” Id.

To establish a *prima facie* case of obviousness, the prior art taken separately or in combination must teach or suggest all the claim limitations. *See* M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006). “[I]n formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.”

USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, May 3, 2007, page 2. “[T]he analysis supporting a rejection … should be made explicit” and it is

“important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements in the manner claimed.” Id. (citing *KSR Int’l Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007)).

Claim 42 depends from claim 32 and, accordingly, incorporates each and every element recited in claim 32. Buzza fails to teach or suggest an “access port [] surrounded by a reagent manifold sealing surface at an exterior surface of the fluid handling station,” as recited in claim 32, and required by claim 42, for the reasons discussed above. Accordingly, no *prima facie* case of obviousness is established based on Buzza with respect to claim 42 for at least this reason.

Moreover, the Examiner acknowledges that Buzza fails to teach or suggest the claimed “aspiration chamber diameter [being] 25% larger than the probe diameter,” as recited in claim 42. Office Action at 14. In light of Applicants’ amendments to the specification discussed above, Applicants respectfully submit that the subject matter of claim 42 is supported by Applicants’ specification. Accordingly, claim 42 is allowable over Buzza for this additional reason.

In light of at least the above reasons, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 42.

Provisional Double Patenting Rejection of Claims 32-43 and 77-80

Applicants respectfully traverse the provisional rejection of claims 32-43 and 77-80 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 65 and 66 of co-pending Application No. 10/841,569 (corresponding to U.S. Patent Pub. No. 2005/0250173). According to the Examiner, the “provisionally rejected claims are not patentably distinct from claims 65-66 of [the co-pending application] because the invention of claims 32-43 and 77-80 is fully encompassed by the invention claimed in the co-pending

application.” Office Action at 15. At the outset, Applicants note that the Examiner appears to have incorrectly included withdrawn claim 77 in this rejection, and the rejection of this claim is improper for at least this reason.

A proper rejection for nonstatutory double patenting requires a finding that the rejected claims are either anticipated by or obvious in view of the copending claims. MPEP § 804(II)(B)(1). Here, the Examiner has not made the required finding, instead simply asserting that the rejected claims are “encompassed” by the copending claims. Office Action at 15. This is not sufficient. At a minimum, the Examiner should point out specific elements recited in claims 65 and 66 that allegedly correspond to or suggest the subject matter recited in claims 32-43 and 77-80. Accordingly, Applicants respectfully request that the Examiner withdraw the provisional rejection of 32-43 and 77-80 or provide additional clarification regarding the basis of his rejection.

Conclusion

New claim 89, although of different scope, recites similar elements as claim 32. Claim 89 therefore should also be allowable over Buzza for similar reasons as those discussed above with respect to claims 32 and 78. Claims 90-96 depend from claim 89 and should also be allowable over Buzza at least due to their dependence. Accordingly, Applicants respectfully submit that claims 32-35, 39-43, 78-80, and 88-96 are in condition for allowance.

In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

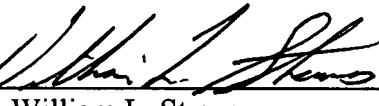
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 12, 2007

By:


William L. Strauss
Reg. No. 47,114

Attachments: Two (2) Replacement Sheets including Figs. 4a-4c.